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ABSTRACT

Part of a six volume series of theme papers commissioned for the National Congress on Catholic Schools for the 21st century, November 6-10, 1991, two papers are included in this volume. In "The Catholic School and the Common Good," John Coons has two objectives: (1) to describe the secular and religious roles of the Catholic school within the historical and contemporary economy of U.S. education; and (2) to consider the social wisdom of providing all families the opportunity to choose among the range of government and private schools, including religious schools. In "Non-Public Schools and Public Policy: The Past, the Present, and Perhaps, the Future," Frank J. Monahan questions public financial assistance for non-public elementary and secondary education. (KM)

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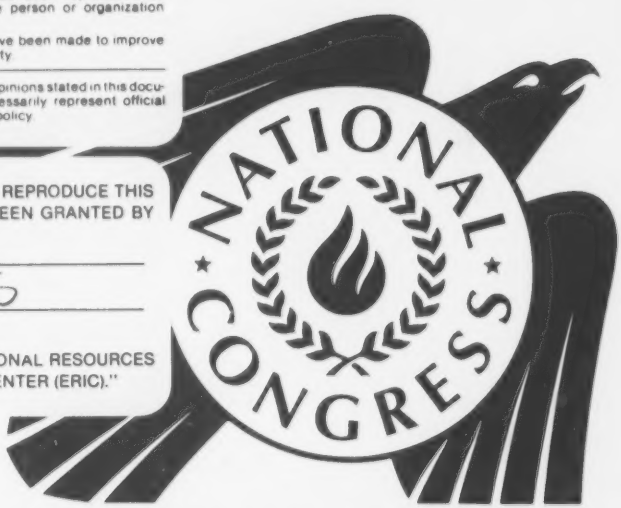

CATHOLIC SCHOOLS
For the 21st Century

THEME:

POLITICAL ACTION, PUBLIC POLICY AND CATHOLIC SCHOOLS

SO 021 051

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POLITICAL ACTION, PUBLIC POLICY AND CATHOLIC SCHOOLS

THE CATHOLIC SCHOOL AND THE COMMON GOOD
John E. Coons, J.D., University of California, Berkeley

NON-PUBLIC SCHOOLS AND PUBLIC POLICY: THE PAST, THE PRESENT, AND PERHAPS, THE FUTURE
Frank J. Monahan, Director, Office of Government Liaison, United States Catholic Conference

National Catholic Educational Association

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TABLE OF CONTENTS

INTRODUCTION 1

THE CATHOLIC SCHOOL AND THE COMMON GOOD
John Coons, J.D., Professor, School of Law, University of California, Berkley

Introduction 5
The Place of the Catholic School in the Present Economy of American Education. 5
Specific Social Consequences of Conscripting the Poor for Public Schools 6
The High Cost in Dollars 7
Self-Reform of the Government Sector Is Unlikely 9
The Roles of Non-Governmental Schools 9
The Special Importance of the Catholic School to the Common Good 12
The Special Importance of Catholic Schools to Catholic Values 13
What Is To Be Done? 13
Parental Choice Must Respect Public Values 14
A Hypothetical Comprehensive Choice System 15
How Such a System Would Ameliorate the Elitism and Inefficiency of the Present Regime 16
Political Weaknesses of Choice 17
Political Strengths of Choice 19
Practical Steps 20

3. NON-PUBLIC SCHOOLS AND PUBLIC POLICY: THE PAST, THE PRESENT, AND PERHAPS, THE FUTURE
Frank J. Monahan, Director, Office Government Liaison, United States Catholic Conference

A Clarification and a Caution 21
The State of the Question 21
Financial Assistance 22
Tax Credits 23
Political Barriers 25

Title I Restrictions 26
Voucher Proposals 28
Tomorrow and Beyond 29
Federal Funding 29
State Funding 30
Grass-Roots Involvement 31
Challenges 33

Study and Discussion Guide 34
About the Authors 36
The Series 38
Order Form 39

INTRODUCTION

This six volume series contains the theme papers commissioned for the *National Congress on Catholic Schools for the 21st Century*, to be convened on November 6 - 10, 1991.

The National Congress is a jointly planned venture of the three departments of the National Catholic Educational Association (NCEA) directly associated with Catholic schools. With the enthusiastic endorsements of the executive committees and directors of the Department of Elementary Schools, Department of Secondary Schools and the Chief Administrators of Catholic Education (CACE), this unprecedented project is intended to revitalize and renew the climate of opinion and commitment to the future of Catholic schooling in the United States.

The purpose of the Congress can be described in terms of three broad goals. To *communicate* the story of academic and religious effectiveness of Catholic schools to a national audience that includes the whole Catholic community, as well as the broader social and political community. To *celebrate* the success of Catholic schools in the United States and broaden support for the continuation and expansion of Catholic schooling in the future. To *convene* an assembly of key leaders in Catholic schooling as well as appropriate representatives of researchers, business and public officials in order to create strategies for the future of the schools. These strategies address five themes:

The Catholic Identity of Catnolic Schools; Leadership of and on Behalf of Catholic Schools; The Catholic School and Society; Catholic School Governance and Finance; and Political Action, Public Policy and Catholic Schools.

The eleven commissioned papers contained in these six volumes represent a common starting point for the discussion at the Congress itself and in the national, regional and local dialogue prior to the Congress.

Since the American bishops published *To Teach As Jesus Did*, their pastoral letter on Catholic education, in 1972, the number of Catholic schools in the United States has decreased by 19% and the number of students served by those schools has decreased by 38%. Simultaneously, a growing body of research on Catholic schools indicates that these schools are extremely effective and are a gift to the church and the nation.

This dilemma of shrinking numbers of schools and established effectiveness indicates a need to refocus efforts, reinvigorate commit-

ment and revitalize leadership at the national and local levels. Thus the idea of a national forum was conceived.

These papers will be useful in fostering a national dialogue, aimed at clarifying the current status of Catholic schools in the United States, and developing a set of strategies for the future in order to strengthen and expand the network of Catholic schools throughout the country.

A number of regional meetings will be held throughout the country prior to the National Congress. These meetings will have a purpose similar to the Congress and be committed to the same three broad goals. They provide opportunities for large numbers of persons involved in and committed to Catholic education to read the theme papers, discuss the identified major issues, and develop written summaries of these discussions, using the study guides included in this series. These meetings will insure the broadest possible participation and strengthen the linkage between national strategies and local action on behalf of Catholic schools.

Delegates to the National Congress will be present at each of the regional meetings. NCEA staff and Congress Planning Committee members will be available to serve as resources and presenters. The results and recommendations from all regional meetings will be included as agenda for the National Congress.

This input from the regional meetings will allow the National Congress to be more representative of the total Catholic community. Consequently, the Congress will be more effective in representing the needs of Catholic schools and thus more able to develop effective and realistic strategies on their behalf. Regional meetings will be held after the Congress as an additional means of strengthening the linkage between national and local, strategy and action.

As Father Andrew Greeley has observed in his research and commentators are so fond of repeating, Catholic schools are most needed and most effective during times of crisis and stress. In the world of the 21st century—with its increasing population, dwindling of already scarce resources, and persistent growth in the gap between rich and poor - collaboration may not come easily. The present conflict in the Middle East being the most visible example. At the same time, rapid and largely unexpected changes in Eastern Europe remind us that the human spirit cannot be kept permanently imprisoned by those who deny the persistent presence and power of the Spirit. Catholic schools which are true to their mission can provide powerful and influential awareness, gentleness and collaboration. They can serve as models for schooling in the next millenium.

The six volumes in this series are:

Volume I: *An Overview*, containing summaries of all eleven papers.

Volume II: *The Catholic Identity of Catholic Schools*, with papers by James Heft, SM and Carleen Reck, SSND.

Volume III: *Leadership of and on Behalf of Catholic Schools*, with papers by Karen Ristau and Joseph Rogus.

Volume IV: *The Catholic School and Society*, with papers by Frederick Brigham, John Convey and Bishop John Cummins.

Volume V: *Catholic School Governance and Finance*, with papers by Rosemary Hocevar, OSU, and Lourdes Sheehan, RSM.

Volume VI: *Political Action, Public Policy and the Catholic School*, with papers by John Coons and Frank Monahan.

A number of acknowledgements must be made. Without the commitment, energy and flexibility of the authors of these papers, there would be no books. They were always willing to be of assistance. Ms Eileen Torpey, general editor of the series, brought an expertise and sense of humor to the process. Ms Tia Gray, NCEA staff, took the finished manuscripts and put them into an eminently readable design format.

Special acknowledgement must go to the Lilly Foundation, without whose funding this project would not have been possible. Catherine McNamee, CSJ, president of NCEA, who allowed the human and financial resources of NCEA to be utilized for this undertaking, expressed continuing interest in the Congress and provided personal encouragement to those working on the project. Michael Guerra, Robert Kealey and J. Stephen O'Brien, the executive directors of the three sponsoring NCEA departments who conceived the project, have continued to work tirelessly for the success of this planned intervention on behalf of Catholic schools. They would be the first to acknowledge that there are many more whose present leadership is an essential element in explaining the current success of Catholic schools and whose future leadership will shape the schools in the next century. A special note of thanks is due those who issued the call to bring us together. They are eloquent role models for any who wish to be a part of this unprecedented effort on behalf of Catholic schools.

Paul Seadler
Project Coordinator
National Congress on Catholic Schools for the 21st Century
January, 1991

THE CATHOLIC SCHOOL AND THE COMMON GOOD

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Introduction

This paper has two objectives: (1) to describe the secular and religious roles of the Catholic school within the historical and contemporary economy of American education; and (2) to consider the social wisdom of providing all families the opportunity to choose among the range of government and private schools, including religious schools.

The Place of the Catholic School in the Present Economy of American Education

Before describing the role of the Catholic school, it is useful to paint a brief picture of the government sector in education.

The great bulk of American public school pupils live in large urban areas. They tend to be sharply separated by race and class. Urban schools are typically attended by the poor and minorities, suburban by the white middle class. The school system contributes to this compartition. State government policies tend to make transfers difficult from one school to another and even more difficult between districts. Hence, school assignment is determined largely by where the family can afford to live; the rich have choice and the poor have

none. Blacks tend to go to the school with blacks and whites with whites. This system of forced assignment has been criticized as undeserving of the name "public." It would appear to be seriously unjust, at least if there are feasible alternative systems which would give the poor the choices enjoyed by the rich.

Government schools also appear to have difficulty discharging their assigned functions, including basic education. This is especially true in the inner city, but increasingly is evident throughout the system. Part of the difficulty is demographic, but there also are systemic reasons that these schools are in trouble. Heavy bureaucratic organization and protectionism are the most obvious. Jobs are tenured by law and remain safe, with little incentive for improvement.

The government sector also is characterized by very heavy regulation, both of the style and content of education. Government schools teach a constrained curriculum, the content of which is determined by the lobbying process which pits conflicting ideological interests against one another. None of these interests may be seriously offended without risk of political reprisal. The curriculum thus tends to be inoffensive and—to some students—boring and inconsequential. Efforts to introduce serious consideration of moral issues has caused the greatest difficulty, and the First Amendment excludes teaching core ideas which have religious content.

Overall, then, the picture is one of a class-driven government sector, which may teach adequately in suburban districts (at least in technical matters), but which falls short in virtually all its major functions in the inner city.

Specific Social Consequences of Conscripting the Poor for Public Schools

Racial and Class Segregation.

With few exceptions among our major cities, minorities are segregated in fact. Enrollment policies of the public systems contribute to this state of affairs. This is true today even in such districts as Kansas City, Detroit, and Denver, which have been found guilty of deliberate segregation and ordered to reform their practices; for there are too few whites left in such school systems to provide the opportunity for significant integration. The courts have clearly backed away from forced inter-district busing. Government policy thus continues to isolate children by income and race. A few middle-class blacks are succeeding in the suburbs, but overall the problem is getting worse, and solutions which depend upon judicial compulsion have run out.

Low Quality and Inefficiency in Government Schools.

1. The Injurious Effects of Monopoly. Competition is virtually non-existent among the public providers of education. The state is divided by statute into exclusive districts; each is given a monopoly over tax-supported education in its territory. Non-residents may not

enroll, except by special permission. Such territorial division of markets in the private sector would violate the anti-trust laws, because of its negative effect upon the quality of the product—any product.

Monopoly, coupled with the tenure system, assures that the managers and employees will have jobs, whether or not the clients are served. There is virtually no economic incentive to improve performance. This lack of accountability through competition is deplored, even by union leaders, including the head of the American Federation of Teachers (AFT). President Bush has identified lack of competition as a central barrier to school improvement.

2. Disappointing Output of the Educational Process. After a massive study, the respected National Assessment of Education Progress (NAEP) concludes as follows:

When the NAEP results are taken as a whole and related to our country's overarching goal for student achievement and citizenship, the result is a bleak portrait of the current status of student achievement in the United States. Large proportions, perhaps more than half, of our elementary, middle-school, and high-school students are unable to demonstrate competency in challenging subject matter in English, mathematics, science, history, and geography. Further, even fewer appear to be able to use their minds well. Across the NAEP findings, cumulative evidence shows that, for any curriculum area, only about half of our high-school seniors may be graduating with the ability "to use their minds" to think through subject-related information in any depth. Fewer than 10 percent appear to have both an understanding of specialized material and ideas comprising that curriculum area and the ability to work with these to interpret, integrate, infer, draw generalizations, and articulate conclusions.

No one would assign blame to particular persons for this lack of productivity; but blame is not the issue. The question is how to restore the vitality of the system. Again and again, social science research has made it clear that private schools teaching the same children as the public schools have obtained equal or superior results at far lower cost. Few would doubt that lack of choice and competition has a depressing effect upon efficiency.

The High Cost in Dollars

The government systems spend roughly $5000 per pupil, which may be nearly twice the full cost of the average private education. The allocation of dollars also differs in the two sectors. Recent studies, conducted independently in New York City and Milwaukee, demonstrate that less than one-third of the public school dollar goes to classroom instruction. But, such a difference in emphasis explains only so much; for it is a vexing reality that greater spending in the government system has no discernible effect upon learning. Some of the best-funded school systems are the least successful.

Efficiency aside, the real dollar cost to society has increased dramatically in the last decade. This is not only because of higher

government spending on schools, but also because industry finds it necessary to invest heavily in the teaching of basic skills to graduates of the government system.

The Marginalization of Public School Teachers.

Except in affluent districts, the teacher in the public sector is deprived of professional dignity. Clients come to the individual teacher, not by choice but because of economic and legal compulsion. The relationship is not professional, but hierarchical.

The teacher may be protected from the risk of unemployment, but is largely powerless to design instruction. The materials and curriculum are largely imposed by political choices made at a remote level.

Unlike other professionals, teachers find it exceedingly difficult to start their own schools, even though the start-up costs are low, relative to other enterprises. Because private schools have to compete with "free" government schools, they are at an enormous and artificial disadvantage. Few lending institutions will provide the necessary capital for such schools. Hence, the teacher is, in significant ways, merely another captive of the system.

Destructive Consequences for the Family.

Irrespective of income class, until kindergarten the typical child experiences the parent as advocate and authority. Through that experience, the child becomes linked to the parent in a relationship of confidence and trust. For those relatively few who can afford to choose, this role as authoritative advocate continues into the school years. Most families, however—and especially the poor—experience school as the end of parental autonomy. The child observes that the parent is powerless to affect and direct this crucial new aspect of life. Against the parent's will, the child is delivered to an institution dominated by adult strangers. It is they who decide where the child goes and what is worth learning.

Like the child, the non-rich parent experiences school as an imperious intruder who terminates the family's authority. Parents in this position cannot consider the school their agent; it is not *in loco parentis*, for plainly it is their master. The effect is commonly one of alienation from the school and resentment toward the class system by which it is imposed. This hostility toward the school is accompanied by a diminished sense of self and an attitude toward education that is, at best, ambivalent. It is a feeling easily transmitted to the child and tends constantly to be reinforced in each by the manifest powerlessness of the parent.

Divisive Impact upon Society.

Through educational conscription, the poor come to perceive both the rich and the public school as hostile forces. The school's well-intended message of social tolerance is too often drowned or transmogrified by its own coercive behavior. The school gives exactly the wrong lesson in civics to its captive audience.

Nor is the content of the government curriculum ideally suited to teach either mutual respect or allegiance to the civic order. Necessarily, it leaves some of life's most important moral and ideological issues unconsidered and, by implication, treats them as unimportant. Politics and the First Amendment inexorably censor conflicting ideological messages; no unifying social principle remains to claim the core of the curriculum. Having left the most important issues unaddressed, the school manages an atmosphere of benign, but banal *laissez faire*. The moral insensitivity of many American youth is wholly consistent with the vapid message of their formal education.

Self-Reform of the Government Sector is Unlikely

The government sector has grave difficulty in reforming itself. Many forces conspire against the freedom of choice familiar to the private sector. Why should public managers be expected voluntarily to abandon their dominion over customers? They tend to view power sharing as a threat, as indeed it is to those providers who would not be chosen in a free system. It is understandable that none of the recent suggestions for public school "choice" has any teeth; none faces the issue of tenure nor includes a system of bankruptcy that would ease unsuccessful providers out of education and into other professions.

The Roles of Non-Governmental Schools

[Note that this section of the statement is directed to the role of private schools in general, and not to Catholic schools as such.]

Non-Government Schools as Voluntary Communities of Belief and Aspiration.

The primary function of the non-government school is to enable families, by choice, to form or join a common educational enterprise. The crucial element is the sharing of purposes by a community of families. The voluntary learning community may be distinctive in its curriculum, its style of pedagogy, or its management; it may be conventional. A free educational order would cherish diversity, even if most families chose the mainstream.

Pluralism could be imagined, even in a coercive order; in theory, a central government could value variety and simply order it. What it could not order is the variety which emerges freely from choice, and it is choice which makes the private school work. Only in the voluntary convergence of families is it possible to create the community which best educates children of all classes.

Many government schools are successful precisely because they are chosen communities; typically they are found in the suburbs. Unfortunately, such communities are available almost exclusively to those parents who can afford to choose them by choosing their residence. In practical terms, schools of this sort are private

institutions and for many purposes could be lumped with the schools which are explicitly private.

The Non-Public School's Contribution to the Common Good.

The non-public school tends to serve various distinctively public functions:

1. Quality. As previously noted, schools which are chosen communities tend to succeed at the most basic educational tasks. Their pupils learn, stay and graduate, even where their students are the most disadvantaged in society.

2. Efficiency. Non-public schools are efficient in their use of resources. The teaching enterprise succeeds, even though the school often spends only half the dollars available to government schools.

3. Difficult students. The record of private schools for admission and retention of difficult students is good, if far from perfect. Compared to the government sector in this regard, private schools as a class come off well. Unlike public schools, they do not exclude lower-class children by their residence. Further, few private schools exclude the difficult to educate; indeed, only a small number exclude even on grounds of behavior, except in cases of risk to other students. Though the fact is little appreciated, it is as common for behavioral cases to be transferred from the public sector as vice-versa.

This is explained in part by the relative flexibility which the non-public school enjoys in handling disruptive students. There is a well-founded belief that non-public schools value discipline; what is less understood is that discipline seldom means expulsion. It is worth noting that the president of the AFT has suggested exporting the most difficult cases from government schools to the private sector and that this suggestion has been well received by many private educators. A system of this sort is now operating in Minnesota.

4. Competition. Non-public schools provide whatever competition exists to keep government schools accountable. The impact of competition is sometimes subtle and sometimes plain. In Berkeley, California, the public school district is considering a modified "buy-out," by which it would attempt to incorporate successful private schools within its own system; the expressed motivation of the district is to reduce its discharge of students to the private schools.

In Kansas City, black parents have asked the federal court to order the segregated public district to provide scholarships to pay for transfers to integrated private schools which operate at less than half the district's cost. The public authorities and teachers' union have engaged five national law firms to resist this request. The threat of private competition is not lost upon government educators.

5. The marketplace of ideas. The private school creates what public schools cannot—a free market in ideas. Government schools are properly required by the Constitution to avoid the teaching of religion. They are even more severely constrained by the politics of sex, race, business, labor and science, which effectively censor doctrine which could offend major social groups. The public cur-

riculum, conceived as a marketplace of ideas, is largely mythical and must remain so. The only possible market is the free play of ideas outside this "neutral" state arena. Those who prize freedom of expression as a public value would do well to reconsider the implications of government monopoly over the curriculum.

6. Social glue. The ideological conscription of the poor is a recipe for social resentment and division. Insofar as the object of education is the inculcation of civic virtue and the mutual tolerance of groups, the most effective instrument is the voluntary learning community. Graduates of non-public schools are at least as law-abiding, tolerant and open-minded as their public school counterparts. It is the non-public schools which stress minority interpretations of the good life. It is typically their pupils who show special awareness of civic obligations which transcend self-interest and the maximization of wealth. Schools which teach very specific moral obligations are effective doorways to the adult perception that community includes all humans. Perhaps children must learn to love in the particular before they can learn to love in general.

7. Professionalism. The conscription of families makes teachers into benign despots; only the liberty of families can transform teachers into professionals. In the private school, by definition, the client is free to leave.

It is, nevertheless, a sad reality that teachers in many non-public schools are compensated so poorly as to limit severely the scope of their professionalism and even to raise serious issues of justice. It is a paradox that the private sector devotes a very much larger proportion of its resources to teachers' salaries.

8. Racial separation. The non-public school frequently has been the agency of racial and class integration. In many cities, such as Detroit and Washington, D.C., private schools provide the only racially-integrated environments. As noted, black parents in segregated Kansas City have sued for subsidies to allow them to enroll in any of 50 private schools, which have volunteered over 4000 places in integrated classrooms. Clearly, private schools could be more of a solution than a problem in the painful process of undoing the effects of official segregation.

In the larger historical picture, this role of the private sector has been constant; there have been deliberately segregated private schools, but, where the law has allowed integration, these have remained the exception. The abortive efforts in the 1950's to maintain segregation by subsidizing racist academies was not the work of private educators, but of state legislatures and governors.

It may be added that private schools are relatively free of racial conflict in their internal life. Families which come together by choice are the definition of successful integration. They provide the primary model for the larger society.

9. Family welfare. Non-public schools support the family. The chosen community maintains the parent's role as authoritative advocate. The child remains confident that there is a caring adult

who can rescue him or her from the institution, if necessary. By celebrating the family's own values, the non- public school dignifies and justifies the social and psychological roles of the parent. In a world in which the home tends to be stripped of authority, the non-public school asserts the legitimacy and dignity of the family. This is especially important in the case of the poor or single-parent home in which the parent is so easily shorn of meaningful responsibility.

The Special Importance of the Catholic School to the Common Good

Catholic Schools Are a Natural Experiment Which Has Worked.

This society has watched Catholic schools provide education on a mass basis for 150 years. This prolonged, intense and unique experience constitutes in itself the most dramatic evidence that, by trusting the common citizen, the good of the entire society can be served. Until recently, the evidence for this conclusion was unsystematic. Today, it is the conclusion of serious social science inquiry. The professionals demonstrate that Catholic schools have most nearly solved the intractable problem of teaching disadvantaged children; they have served the poor best of all.

In comparison to the bureaucratic model, these schools also are a marvel of efficiency. They give real hope that America can eventually resolve its educational crisis without spending itself into bankruptcy.

Finally, these schools have demonstrated that strong religious education not only is compatible with inter-group tolerance, but also that it could be one of the primary sources of tolerance. Given what is now known of Catholic schools and their graduates, it would be very hard to argue that mutual respect among social groups is fostered best by a "neutral" curriculum.

Catholic Schools May Be the Critical Mass on Which the Hope for Political Change Depends.

The Catholic experiment not only has been successful, but it also has been big, durable and adaptable to changing times. It is impossible to write off this experience as the creature of a peculiar historic moment. Indeed, it cannot even be perceived as an institution peculiarly adapted to Catholics; it has served, and serves, too many families which are too diverse in their beliefs and circumstances to allow it to be ignored as merely "parochial." It would be interesting to know how many non-Catholic black leaders have spent more than a few years in Catholic schools.

This magnitude, impact, durability and social catholicity have a special political significance. No serious reform of education in this country can ignore the lesson of the Catholic school. No responsible government is entitled to imagine that non-public education is a creature of class or tribe. No plausible public policy hereafter can

ignore the demonstrated capacity of private education to serve the public good in every sense in which that term may be understood.

The Special Importance of Catholic Schools to Catholic Values

There are several specifically Catholic effects which are fostered by Catholic schools.

1. Subsidiarity. Such schools are a particularly suitable milieu for the practice of what the church has called "subsidiarity." This term denotes the idea that in general, authority should be located in those persons most affected by its exercise. One of the premises of subsidiarity is that those affected by a policy are likely to be the best judges of their own welfare; another is that human potential can only be actualized in freedom. Absent demonstrated abuse, parents are assumed to be the best judges of their children's interest. Institutions which parents freely choose to educate their children are a plausible amalgam of the parents' judgment and the experts' art. However the outside world may picture the church "hierarchy," this decentralized way of looking at things is resoundingly Catholic.

2. Core belief. The church rightly uses Catholic schools to preserve the deposit of learning which defines the faith community. There is content to be learned. Those who study the matter systematically report that it is best learned within the community of a Catholic school.

3. Preference for the poor. Through the school, the church fulfills one crucial aspect of its mission to the poor. Regardless of the particular faith of its beneficiaries, this work is commanded in a broad way by the Catholic ideal. The school has been a peculiarly effective mode of expressing that ideal. It is a witness to the pragmatic generosity of the church and those supporting members, who give of their treasure and time.

4. Evangelization. There is disagreement within the church as to the desirability of evangelizing non-Catholic children through the schools. Heavy religious indoctrination of non-Catholics is relatively rare in fact. To a degree, however, the inculcation of ideology is implicit in every effort to educate in either the public or private sector. Inevitably, Catholic schools offer their non-Catholic pupils an alternative vision of the truth.

What Is To Be Done?

Choice is the apparent answer. Providing universal educational choice to parents through government subsidies would seem the *prima facie* solution to the most dramatic failures of the command system now in place. It would increase efficiency, but—even more

importantly—it would render education humane and democratic by treating all income classes with trust and dignity.

Choice also is the popular answer. Major polls all show parental choice to be the strong national preference; not surprisingly, its strength is greatest among disadvantaged groups. Apparently, that preference extends to the choice of private schools. Though in recent years the Gallup Poll has inexplicably dropped the question about private schools, its results from earlier years—and those of other polls today—clearly display the popularity of the idea that choice ought to obtain in both sectors. There is clearly no absolute political barrier.

Parental Choice Must Respect Specific Public Values

There are many ways to implement parental choice. Some do not deserve support. It would be tragic to replicate the elitism and inefficiency of the present government regime by supposing that every form of aid to families will ameliorate the problem. Educational choice as the instrument of reform will require commitment to at least four specific premises.

1. The new system should promise real improvement for government schools. The reason for this is simple: choice is the objective, and many (probably most) American families will prefer to use a government school.

Therefore, the basic rules of the game should be broadly the same for both government and non-public providers. This means massive deregulation of the present government school and modest, but significant, new responsibilities for participating private schools.

2. For several reasons, the common good requires that private schools be included in any system of choice.

- Choice confined to the public sector shields government schools from the authentic competition upon which their own improvement depends.
- The curriculum that can be taught in government-operated schools is necessarily narrower and less diverse than the set of ideas which Americans want transmitted to their children. The state is properly limited by the First Amendment and by political constraints; but increasingly, this means that, for many families, its schools cannot offer to the community of shared belief that educators now recognize as the most effective learning environment.
- Any system of school assignment which dishonors the curriculum preferences of low-income and minority families is a powerful source of class and racial resentment. Only by trusting the poor as fully as it trusts the rich can society begin to heal its deep social divisions.
- In many urban areas, private schools are the only practical source of racially-integrated education for minority children.

- Private schools have demonstrated their ability to serve, even the most disadvantaged children, at a substantially lower cost than government-operated schools.

3. The liberty of private schools to choose and implement their own mission must be protected.

Schools should be subject to no increased regulation in respect to the crucial areas of curriculum, teacher hiring, employment terms, facilities and discipline.

4. The poor should be protected.

Popular providers in the government and private sectors will have incentives to exclude certain children—in particular, children of the poor. Hence, the new system should provide an effective measure of protection for low-income families in respect to admission; there is no hesitation in suggesting a set-aside of 25 percent of new admissions for children of low-income families in any participating school, public or private.

Another danger is that extra charges could be as effective to exclude the poor as is the price of real estate in affluent suburban school districts. Such charges need not be forbidden, but should be required to reflect each family's ability to pay.

A Hypothetical Comprehensive Choice System

Educational subsidies to the family can be introduced in countless forms. They could be limited to drop-outs, "at-risk" children, special education or other specific sub-groups. An obvious possibility is the "voucherization" of federal Chapter I funds so as to provide a choice to the receiving family. (It is a tragedy that Catholic authorities actually impeded this reform in the 1980's.) The following is an outline of a comprehensive system of parental choice, suitable for adoption by the states:

1. Parents of every child, who choose other than their assigned local public school, would be eligible for a state scholarship worth, on average, 90 percent of the amount presently spent statewide in public schools, with adjustments made for children in various circumstances (such as grade level and handicap).

2. The scholarship would be funded by the state. In the initial years, at least, the amount might simply be subtracted from the state subvention to the child's district of residence, though various arrangements are possible, and even probable, in the long run.

3. Districts could continue to operate as at present, and to the extent they chose to do so, their funding and administrative arrangements would remain unchanged. Districts, however, would now be empowered to create individual public schools of choice in any number. Each would be organized, in effect, as a separate non-profit public corporation. Except in regard to the teaching of religion, each would operate under the rules affecting private schools (see number 4 below). Every such school would stand financially on its own; like participating private schools, these independent public schools and their faculties would survive or fail, according to their

capacity to attract customers and their scholarships. Those schools which failed would be subject to the bankruptcy process which regulates private businesses.

4. Private schools would continue to operate as today and without further regulation, except to set aside 25 percent of new admissions for children of low-income families, if so many applied, and either to accept the state scholarship as full payment of tuition or scale any extra charges, according to the family's capacity to pay. (These rules would apply as well to the new public schools of choice.)

5. Public schools which chose to operate and to be financed in the traditional manner, would be opened up to non-resident families to the extent that space is available after local families have been served.

6. Public and private schools would provide information concerning such matters as curriculum, faculty credentials, and test scores to an extent sufficient to allow intelligent choice. Public and private welfare agencies would help to assure the delivery of such information to disadvantaged clientele.

7. The system should be phased in, with perhaps a delay of a year or two in the participation of private schools, to ready the public sector for competition.

8. Federal Chapter I funds would no longer go to institutions, but rather directly to low-income parents. They would be available for the purchase of supplementary educational services, such as tutoring in reading and music or for instruction in computers or a foreign language. Parents could obtain such services through their child's school or elsewhere, if they preferred.

How Such a System Would Ameliorate the Elitism and Inefficiency of the Present Regime

The first chapter specified the major negative consequences of any system which conscripts the poor and empowers the rich. The proposal just outlined gives promise of improvement in each of these areas, as follows:

Class and Racial Integration.

The exclusive division of markets by government schools has created class and racial separation; choice may

begin the process of integration. Opening up all schools to the ordinary family will, in many places (e.g., the District of Columbia or Kansas City), automatically increase integration. In other areas, choice may produce a mix of integrated and one-race schools. In the latter case, however, whatever segregation still exists will be entirely by choice. Our society will have started the process of shifting from the failed policy of compulsion to a promising policy of gradual assimilation by voluntary action.

Quality and Efficiency.

In respect to quality and efficiency, there appears to be a consensus even among opponents of choice. Virtually all agree that competition and consumer autonomy are the primary hopes for raising educational standards.

Teacher Welfare.

Consumer autonomy would not only redirect a major portion of the tax dollar from administration to teachers. It would, for the first time, make public teaching a professional activity; the provider and the client would connect in a relationship of freedom and dignity. Choice also would make the formation of new teacher-owned schools a realistic hope.

The Welfare of the Family.

Parental autonomy—the chance to choose and to change schools—would be an elemental change in the internal life of the ordinary and poor family. School-age children would experience their parents as authoritative advocates; and all parents would be challenged with this responsibility so cherished by the middle class. Not all would meet the challenge; there still would be failures, requiring the social net for the prevention of child neglect. But, there would at last be a policy recognizing that the ultimate hope for this society lies in the reform, and not in the discarding, of the family.

Social Cohesion.

Systems of educational choice presuppose that racial, ethnic and ideological minorities judge the large society, in part, by its attitude toward them. Minorities whose opinions are treated as unimportant tend to be resentful and xenophobic. For them, a new regime which respected their preferences would be a form of social glue; the proposed system could be expected to pay dividends in tolerance and reciprocity.

Political Weaknesses of Choice

There is a very significant array of political barriers to choice. These include the following:

The Relative Indifference of Most American Bishops.

The participation of the church will be one necessary element among many in the process of reform. Church leadership thus far has shown little enthusiasm for empowering parents. The 1987 pastoral speaks of a "preference for the poor," but inexplicably ignores their pleas that the bishops endorse a system of parental choice.

The Difficulty of Organizing Parents.

Families have diverse and conflicting goals. Further, their amalgamation in a self- sustaining organization faces what the

economists call, the "free rider problem." If others will support the cause, one can have the benefit without the cost of joining; hence, nobody but the occasional altruist pays dues.

The Political Leadership of Minority Groups.

An extraordinary proportion of minority group "leaders" hold jobs in the existing school regime or in allied political institutions. It may be too much to expect support from minority families, whose participation in reform efforts might require career adjustments.

Religious Bigotry.

The possibility that parents, once liberated, would choose Catholic or Fundamentalist Christian schools is offensive to more than a few well-placed Americans.

The "Public" School Mystique.

Many Americans still suppose government schools to be the primary cradles of democracy. Conversely, they imagine private schools to be elitist. Substantial public and private resources are devoted to maintaining this image.

Public School Exodus.

Paradoxically, many criticize choice because they predict that many public schools would be abandoned once ordinary people could escape them. This argument obviously substitutes a mere social instrument (the schools) for the end (the common good). It is mystifying, but it is widely asserted.

Suburban and Elite School Xenophobia.

Some who are comfortable in good suburban public schools oppose their being made available to inner-city children.

Elite private schools also tend to be ambivalent. Their very existence should imply support for choice. Universal subsidized choice, however, would improve free education. With good education free to all, the capacity of expensive elite schools to remain outside the new system would be problematic.

The Union Problem.

Schools of choice would be harder to unionize than is the present regime. For the first time, parents would be free to leave schools which were shut down by strikes. Labor would thus experience the same limits upon its power which society finds necessary for the rest of the economy.

Unions tend also to be run by teachers with seniority who are well paid, settled, protected, and comfortable under monopoly conditions. Few are interested in the possibility of creating schools of their own or otherwise rocking the boat.

The Inter-Relation of Government Schools and Other Interests.

Business leaders who claim to endorse choice and competition often are reluctant to support parental autonomy; in many instances, public schools are among their major customers. Inner- city black pastors, who would seem to be promising school entrepreneurs, often worry about losing the good will of important parishioners who hold positions in public education.

Political Inter-Dependencies.

State office holders often are dependent upon support of teacher unions; in most states, these unions are among the largest political contributors.

Political Strengths of Choice

Ignorance as Hope.

Paradoxically, the principal reason to expect reform through choice is the popularity of choice, even under the existing conditions of extreme ignorance. The public has scarcely heard of the issue; choice has yet to be explained both in its ends and its means. Now that the seal has been broken on the question, it eventually will be explained. It is a fair prediction that, as public knowledge grows, the popularity of choice will increase. Inevitably, this will stimulate support among a generally well-meaning state and national political leadership which has been riveted to the old regime and is largely unaware of its pernicious impact upon the poor.

The Unassembled Elements of Coalition.

The political difficulties are formidable, but there are a number of substantial interest groups waiting to be forged into a coalition for choice. These include:

1. Parents, at least some of whom can be organized as a quasi-lobby.
2. Older children, especially drop-outs and others who have found the system antithetic.
3. The occasional leader of low-income groups, who remains independent of the existing educational regime.
4. Minority religious leaders, especially those who might consider starting schools.
5. Infant day-care operators, for whom the creation of elementary schools would be a natural extension of their present work.
6. Business leaders interested in the quality of available labor.
7. Racial integrationists, who can perceive the potential contribution of having a choice among both private and public providers.
8. Private schools, except possibly elite independent schools and racist academies, which would be excluded.
9. Individuals active in private welfare institutions which are interested in the poor (e.g., the YWCA and Catholic Charities).
10. Libertarians, who should perceive even a regulated system

of choice as a benign transformation.

11. Academics interested in the various aspects of human autonomy—the market, civil liberties, social pluralism, and so forth.

12. Teachers, whether government or private, who seek professional status, economic opportunity, and the chance to teach in freedom.

13. Migrant workers, for whom peripatetic schools of choice could become an alternative far superior to the punishing institutions they have known.

14. Home schoolers, who (with or without subsidy) would benefit from the state's recognizing choice as a primary value.

15. Working custodial parents, who wish to have their child accessible throughout the work day.

16. Taxpayers who wish to realize the efficiencies of the market in the provision of a public good.

17. Parents of special education children for whom the market could be expected to diversify and better serve their children.

18. Educational entrepreneurs who would be expected to hunt the profitable niches in a very diversified market.

19. Industrial labor unions whose blue collar members have been the typical victims of the present compulsory order.

Practical Steps

Such a coalition—of which the church should be one enthusiastic part—would indicate a series of obvious practical steps to: (1) inform the general public; and (2) achieve choice politically where this is possible. The two objectives will generally coalesce.

The possible political instruments will be many. Litigation may occasionally play a crucial role, as in the pending Kansas City case. Litigation can emphasize that private schools (including religious schools) are a part of the solution to our national problem. Occasionally, the courts will become not only the arbiter of crucial legal propositions, but also—and even more important—the arena for a national seminar on choice.

For the long haul, two new institutions should be formed by such a coalition. The first is a 501(c)(3) (tax-deductible) national center for the collection, generation, research, and dissemination of promising ideas. Its activities in support of choice would be as broad as the Internal Revenue Code permits. The second is a center designed for political activity and prepared to mount a diversified lobbying effort in support of choice. It would promote constitutional initiatives where state law provides for them. Where it does not, all the conventional tools of political persuasion should be focused upon the legislative process.

The church should play a forthright and energetic role in the formation of such a pluralistic caucus and in the creation of the two separate centers for education and political activity. It has no higher calling today in the secular order.

NON-PUBLIC SCHOOLS AND PUBLIC POLICY:

THE PAST, THE PRESENT, AND PERHAPS, THE FUTURE

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A Clarification and a Caution

The first challenge in addressing this kind of topic is to define the term "public policy" to make it manageable within the context of a paper such as this. "Public policy," as it relates to education, includes issues of regulation, tax exemption, and funding for schools. All of these are important matters, but for purposes of this paper, the discussion will be limited to the question of public financial assistance for non-public elementary and secondary education.

It also should be noted at the outset that this paper is not intended to be a legal or constitutional analysis. Rather, it is the reflections of a layperson, who has had over two decades of experience in advocating for public assistance to Catholic school parents, students, and teachers.

The State of the Question

The current status of public assistance for church-related education at the pre-collegiate level can be understood in the context only of recent past history, more specifically the years just before and since 1971. That year, 1971, was a watershed in American legal history with respect to the issue of public aid to religiously-affiliated schools. For many years prior to that time, both state and federal legislatures

had devised a wide variety of programs to assist students and teachers in these schools. At the federal level, these included such things as the national school lunch and federal surplus property programs, the student loan and scholarship

programs for pursuing studies in mathematics and science, services for low- income and educationally-deprived children, as well as grants of equipment and library materials for specific educational uses under the Elementary and Secondary Education Act (ESEA) of 1965, and many other programs. Federal aid programs typically were enacted to provide assistance to both the public and private sectors of education. At the state level, programs included purchase of textbooks, provision of school transportation services, and school health services, among other things. Often, these programs were enacted specifically to benefit the non-public school students of the state in a manner similar to state aid for public school students.

Financial Assistance

Prior to 1971, there had been no serious constitutional challenge to the federal statutes, while litigation against the various state statutes either had failed or had met with very limited success. However, in the years just prior to 1971, two new forms of state aid had been designed and enacted into law in Pennsylvania and Rhode Island. The first of these, enacted in Pennsylvania in 1968, was based on the concept of a state "purchase of certain secular educational services" from non-public schools, most of which were religiously affiliated. The theory was that these schools provided a secular public service at a considerable savings to the state public education system. Since these schools met or exceeded public standards of education and did so at a lower than average per-pupil cost, it seemed to make eminent good sense for the state to reimburse these institutions for part of their costs in educating these children.

The second state law, enacted in Rhode Island in 1969, provided a salary supplement to teachers of secular subjects in non-public elementary schools. This law was based on the state legislature's finding that rapidly increasing teacher salaries in the public sector were jeopardizing the quality of education in non-public schools, which were financially unable to compete for competent and dedicated teachers. The law provided that the state could supplement the salaries of non-public school teachers of state-approved secular subjects by paying directly to the teacher an amount not in excess of 15 percent of his or her annual salary.

These two laws represented attempts by state legislatures to provide financial assistance to the institutions. The Pennsylvania purchase of services law did so directly by reimbursing the school for part of its operational costs, while the Rhode Island statute was a program of direct monetary assistance to teachers, which indirectly accrued to the financial benefit of the educational institution. These

two laws were quite quickly challenged on the grounds that they violated the First Amendment prohibition against the governmental establishment of religion. The challenges were resolved by the United States Supreme Court in June of 1971, in the *Lemon* and *DiCenso* cases. Both laws were struck down as unconstitutional. However, at the same time, in a separate decision (*Tilton v. Richardson*), the Supreme Court upheld a federal statute providing direct assistance to church-related institutions of higher education.

These are landmark decisions for many reasons. In the elementary and secondary school cases (*Lemon* and *DiCenso*), the court laid out the basic criteria by which educational aid cases would be judged for the next two decades. This is the now-famous three-pronged *Lemon* test: "To avoid conflict with the religion clauses of the First Amendment, a statute must have a secular legislative purpose, its principal or primary effect must be one that neither advances nor inhibits religion, and it must not foster excessive government entanglement with religion."

However, in the *Tilton* case, the court distinguished church-related *post-secondary* institutions as categorically different from church-sponsored elementary and secondary schools. The court seemed to rely on its perception that institutions of higher education were generally not as religiously oriented as were elementary and secondary schools and that college-level students were less impressionable and therefore, less vulnerable to religious influence.

A careful reading of the elementary and secondary school decisions seemed to forecast that programs of financial assistance to *institutions* would be much more difficult to sustain in litigation than those which assisted *parents* and/or *students*, with only incidental financial benefit to the institution.

As a result of these decisions, the focus of the Catholic school community's strategy for securing assistance shifted dramatically. Shortly after the decisions were handed down, Bishop William E. McManus, who was then chairman of the U.S. Catholic Conference's (USCC) Committee on Education, called for the creation of a national committee of Catholic educators, diocesan attorneys, and state Catholic conference leadership to meet with the staff of the National Catholic Educational Association (NCEA) and the USCC to assess the damage and recommend future courses of action.

Tax Credits

After many meetings and a great deal of deliberation, the committee recommended that, from the standpoint of constitutional viability, efforts should be redirected toward modifying tax laws so as to provide relief to parents, who were exercising their basic rights in assuming the extra costs of educating their children in Catholic and other non-public schools. Thus was conceived the idea of "tuition tax credits."

The focus shifted to the national government to obtain relief for

Catholic and other private school parents. A very serious campaign was mounted in the following year, 1972, to gain support from Congress and the Nixon administration for tuition tax credit legislation. A significant number of bills were introduced in Congress. Hearings were held in the House Committee on Ways and Means. Terrence Cardinal Cooke, the Archbishop of New York, was asked to testify, thus ensuring that the members of the committee understood how important this legislation was to the church. Even the national labor federation, the AFL-CIO, was convinced not to oppose the legislation, as long as the tax benefits were limited to only the parents of private school students and did not include public school parents. There was bipartisan support from Congressional leaders in both the House and Senate. The very powerful chairman of the Ways and Means Committee, Congressman Wilbur Mills (D-Ark.), cosponsored the major tax credit bill and a large majority of the committee voted to approve the bill at the end of the Congressional session. President Nixon also endorsed the bill and in the middle of the presidential campaign, the Democratic nominee, Senator George McGovern (D-S.D.), announced his support. The stage was set for a successful effort to enact tuition tax credit legislation in the following Congress, which would convene in January of 1973.

Unfortunately, during this same time, another state law was heading for the U.S. Supreme Court. This was a New York statute that provided a multipurpose program of aid for non-public education, including tuition tax credits for parents of Catholic and other private school students. The court decided to hear this case in 1972 and rendered its opinion in June of 1973 in the *Nyquist* decision. The court struck down the entire program, including the tax benefits, which were available only to parents of private school students.

From the *Nyquist* decision, it seemed advisable that educational aid laws should benefit a broad class of citizens, and not be limited to parents of non-public school students, in order to increase its chances of success before the Supreme Court. However, the political viability of the proposal pending before the Congress hinged on its being limited to private school parents. First of all, the cost of the proposal, in terms of lost revenue to the national treasury, would increase greatly by adding public school parents as beneficiaries. And secondly, the public school lobby would activate strong opposition, since it saw a tax credit proposal, which included public school parents, as undermining the traditional direct tax support for its institutions.Consequently, the Catholic school community temporarily retreated from its effort in Congress.

Between 1973 and 1983, there were two additional attempts to get Congress to enact tuition tax credit legislation, each as a result of the issue becoming a political priority within the Republican Party.

In 1977, Republican leaders in Congress considered tuition tax credit legislation as a major priority, which could help the party's candidates in the upcoming 1978 mid-term elections, as well as in the 1980 presidential election. They hoped to attract the votes of

Catholic and other religious communities and mounted a serious effort in Congress to move legislation which would benefit the parents of private elementary and secondary school students, as well as both public and private college students. (Post- secondary students were included in order to increase the base of support and provide a broader class of beneficiaries.)

The Catholic school community supported this legislation and was able to generate strong Democratic support in Congress, despite the opposition of the Carter administration. Different versions of the bill passed each House of Congress in 1978. However, the legislation ultimately died in a House-Senate conference committee in the waning days of that Congress, in the fall of 1978. It had fallen victim to the threat of a Senate filibuster by the allies of the public school establishment, which had worked hard to kill the legislation.

The issue was revived in the 1980 presidential election when the Republican party, in its platform, unequivocally supported the passage of such legislation and Ronald Reagan made it a priority in his campaign. Unfortunately, though, President Reagan did not include tuition tax credit legislation as part of his program for the first Congress in his first term. An attempt was made in the next Congress, and the Catholic school community once again made a strong effort to support the legislation. However, by this time the issue had become closely identified with the Reagan conservative social agenda, which resulted in serious erosion of moderate Democratic support. Moreover, the vote in the U.S. Senate in November of 1983 revealed that this loss of support in the center was not offset by increased support from conservative Republicans, many of whom ultimately voted against the President's proposal.

Ironically in that same year, namely June of 1983, the Supreme Court upheld a Minnesota state statute, which permitted state taxpayers to claim a deduction from their gross income for certain expenses (including, but not limited to tuition), incurred in educating their children. The *Mueller v. Allen* case was a significant legal breakthrough in the effort to find a constitutionally- acceptable method to provide public assistance to parents of non- public school children. A significant factor in the court's reasoning was that the public benefit—in this case, the tax deduction—was made available to *all* citizens who incurred costs in educating their children, whether in public or private, secular or sectarian institutions.

The *Mueller* decision provides guidance on how to fashion a program of aid, which includes parents of students enrolled in church-related schools, that can survive an "establishment clause" challenge.

Political Barriers

However, the history since that 1983 decision demonstrates that there remain many political barriers to the successful enactment of such parental assistance programs, either in the form of tax benefits

or vouchers. To begin with, legislative proposals, which included both public and private school students, involved costs that proved to be prohibitive at the federal level during the deficit years of the 1980's. (These cost levels have been a detriment to legislation at the state level as well.) In addition, the well-organized and highly-financed opposition from the public schools and their supporters has penetrated the Democratic Party and has even made inroads into the Republican Party during the past 10 years. That lobby has successfully sold the idea to public policy makers that any attempt to provide significant financial assistance to private education will be done at the expense of public education. Consequently, only one other state has enacted a law analogous to the Minnesota statute since the *Mueller* decision was handed down in 1983—the state of Iowa, which passed a tuition tax credit law in 1987. Efforts in New York and New Jersey have come to naught because of the opposition of either the Democratic or Republican leadership in those states, or of both. President Bush made it clear during the 1988 campaign that any new initiatives of this type were not on his "first term agenda" and there is no interest in considering this issue on the part of the current Democratic leadership in Congress.

Not all of the history of this period is negative. Some state legislatures did find ways of providing limited assistance to non-public education. Ohio enacted an "auxiliary services" program which provided:

- diagnostic speech, hearing, and psychological services to non-public school students in their own schools; and
- therapeutic services in these same areas, as well as remedial educational services, and guidance and counseling, which were delivered in public schools, public centers, or publicly-owned mobile units.

New York passed legislation that authorized reimbursement to private schools for "state-mandated activities," such as recordkeeping and processing state-required testing programs. During this same period of time, between 1970 and 1990, Congress continued to enact legislation either to expand existing categorical aid to all of elementary and secondary education or to create new programs of this sort. These federal programs all provided for the equitable participation of non-public school students and/or teachers.

Title I Restrictions

The landmark federal legislation, which, for 20 years had never been successfully challenged in court, was the Elementary and Secondary Education Act of 1965 (ESEA). This and similar subsequent laws provided narrowly-defined categories of aid for specific groups of public and private school students and/or teachers. These were passed to address national problems related to education, which state and local government could not or would not solve. For example, Congress found that there were not enough state or local resources

to address the growing problem of underachieving poor children. Therefore, the ESEA Title I program was created to provide new federal monies for compensatory education programs for such children. From the very beginning, in 1965, programs such as these were to be provided to all eligible children, regardless of where they attended school. The federal funds actually were distributed to the state and local public school authorities, which in turn were required to provide services to eligible public and private school children on an equitable basis. This was called the "child benefit theory," i.e., the categorical or limited-purpose aid was for the benefit of the child and not the institution. This concept was developed and promoted by the policy makers at the time, partially to finesse the historical church/state debate, which prior to 1965, had prevented Congress from providing significant federal aid to non-public elementary and secondary education.

It is noteworthy that for the past 25 years, Congress has repeatedly maintained its commitment to the principle of fair and equitable treatment of private school students and teachers. There have been several major revisions of ESEA since 1965 and innumerable new federal aid laws enacted. In each instance, Congress has maintained, expanded, or strengthened statutory provisions to ensure such fair and equitable treatment. Though attempts have been made by opponents of such aid to eliminate and weaken the requirements for the participation of non-public school students, the vigilance and efforts of the national representatives of the Catholic school community have prevented any such erosion.

Unfortunately, a full 20 years after the enactment of ESEA, there developed a successful challenge to the largest program (Title I) authorized by this law. In July of 1985, the Supreme Court handed down the *Aguilar v. Felton* decision, which prohibited the most important and educationally-effective method of delivering compensatory education services to non-public school children under Title I. The Title I program typically involved public school personnel teaching non-public school children *on the premises* of the non-public schools, and this was found to be an impermissible method of providing Title I services.

It should be noted that the federal statute itself was not rendered unconstitutional. Therefore, parochial and private school students were still entitled to the services, but the services had to be provided off the premises of the church-related school. This decision has caused untold damage to the Title I program in Catholic schools. Necessary and very valuable services were terminated for tens of thousands of low-income and educationally- deprived children since the public school district, now lacking the option of providing on-site services at non-public schools, found alternative methods too costly and cumbersome. Catholic school leaders are still struggling to find viable alternative methods of ensuring that their students obtain the services to which they continue to be entitled under the law.

Voucher Proposals

The *Aguilar* decision forced consideration of the use of "vouchers" as a mechanism to deliver Title I services in the Congressional debate during the last authorization of ESEA in 1987-88. The Reagan administration developed several proposals to address this issue and the USCC urged serious consideration of the voucher alternative. Basically, these proposals called for the local education agency to offer the parents of eligible Title I students a voucher valued at the cost of providing the Title I services, in lieu of the actual services being provided by the public school district. The parents would be able to use the voucher to purchase compensatory educational services either from the public school or from any other qualified provider, including a private or parochial school.

The public school lobby threatened total opposition to this proposal, and the Democratic leadership in Congress came forward with an alternative, which ultimately was adopted—namely, to provide new federal funds to pay for the extra costs of arranging for the provision of Title I services off the premises. Since Congress first authorized this new funding, 80 million dollars have been appropriated for this purpose. The additional funding appears to have had mixed results in terms of restoring the participation of eligible Title I students in Catholic and other non-public schools to the levels in effect prior to the 1985 *Aguilar* decision. The issue of vouchers as a method of delivering categorical aid may very likely surface in the next reauthorization cycle, in 1992-93.

With regard to the voucher issue, the most positive development at the federal level occurred at the close of the last Congress, in late October of 1990, in the context of new federal child care legislation. In child care, which is essentially a hybrid of education and social services, Congress has enacted the first federal program of its kind after 20 years of effort. The USCC made this legislation one of its top priorities, insisting that the program should provide direct financial assistance to parents; the parents would, in turn, be free to use this aid to purchase child care services from church-sponsored providers, even if their programs were religiously oriented. In this context, Congress recognized that there existed a diverse center- based provider community, historically dominated by churches and institutions of all denominations. In response, Congress fashioned a program of child care "certificates" (vouchers), which states must offer on demand to eligible parents. Any church-sponsored child care program that can meet required minimal state standards related to health and safety should be able to participate without regard to the sectarian content or context of their program.

In the Congressional debate on child care, the *Mueller* decision was one of the keys to resolving the constitutional questions. Respected legal authorities, consulted by the leaders of Congress, concluded that this legislation contemplated a broad class of eligible recipients for this new federal aid and a wide real range of choices of child care providers, including public, private, secular, and

sectarian. Any financial benefit to the provider was incidental and resulted from the free choice of the parent, not from a mandate of government policy. Litigation is considered inevitable, but the prognosis for this law to survive a constitutional challenge is considered good by the legal experts.

Tomorrow and Beyond

Where does this leave the Catholic school community in formulating successful strategies for the future? In the first place, any realistic assessment of the political climate for providing public assistance to non-public elementary and secondary education should quickly distinguish among the federal, state, and local levels. Historically, the federal government has been the junior partner in the financing of education in this country. Currently, the state share of elementary and secondary education funding is about 50 percent. Local government provides about 44 percent, while the federal share is only about 6 percent. In recent years, the local and federal shares have decreased (from 52 percent to 44 percent and from 8 percent to 6 percent, respectively), while the states have, on the average, increased their financial contribution from 40 percent to 50 percent.

Federal Funding

The national budget deficit has only exacerbated the restraints on any new federal spending for education. Funding for elementary and secondary education fits into the federal budget category of "domestic *discretionary*" spending, which normally is subject to annual scrutiny for reductions or freezes. Furthermore, in the agreement which the President and the leaders of Congress forged at the end of the last Congress, in October of 1990, all non-defense domestic discretionary federal spending was frozen for five years at its current levels, except for those small increases necessary to keep up with inflation.

The much-touted "peace dividend," resulting from the dramatic events in Eastern Europe and the Soviet Union has not materialized. This was anticipated to be a source of significant new federal revenues for necessary domestic spending, including education. The 1990 budget agreement mentioned above prohibits the transfer of any defense funds to domestic programs until Fiscal Year 1993 and this prohibition could be extended to Fiscal Year 1995. In addition, developments in the Middle East may severely curtail any dividends from the defense budget for the foreseeable future. And finally, recent federal budget agreements have demonstrated that any new savings are likely to be used for maintaining current federal programs or reducing the deficit levels, rather than for any new initiatives.

All of this is to say that any legislative proposal for "choice in education"—such as a program of broad-based educational assistance to parents through general educational vouchers—never has had, nor

is likely to have, much viability in the United States Congress. Even a more limited approach to federal financial assistance—such as tuition tax credit legislation—does not have a very promising future in the Congress until the deficit problem is resolved. The most that might be expected at the federal level would be efforts to authorize experiments with, or to study the use of, a general educational voucher (as was done in the late 1960's and the 1970's through the Office of Economic Opportunity and the National Institute of Education).

However, as was alluded to earlier, a "*general*" education voucher should be distinguished from a voucher that could be used by an eligible student to purchase a particular service—such as remedial education under Title I of the ESEA. The latter type of voucher would simply provide a mechanism to deliver existing categorical aid with little or no increased cost to the federal government, therefore avoiding any budget problems. The federal government utilizes this kind of voucher in such programs as nutrition (food stamps) and housing (vouchers to assist low-income persons in obtaining affordable housing). It is conceivable that such a method could be used in categorical aid to education programs as well; however, public school opposition, even to this very narrowly-defined use of a voucher, is intense. It would take a major effort by the Catholic school community and its allies to get Congress to act positively on such a proposal.

State Funding

In the more complex arena of the 50 state legislatures, there have been few positive developments around the country in recent years. Historically, it always has been difficult to coordinate a national effort to press for state legislation to authorize and fund programs for aid to non-public education. The state legislative bodies are autonomous and independent, and the Catholic school community exists as part of a decentralized church structure. Moving around the country, one also sees very uneven political strengths, related primarily to numbers of constituents and institutional presence.

Despite these realities, funding at the state level is the most likely source for significant financial assistance for non-public education. Public opinion polls continue to indicate that education is a top priority for the American people and will continue to be a major issue on the political agenda, both nationally and especially in the state legislatures.

States will have to continue to increase funding for education. The question for the state legislatures is whether or not non-public education will be accepted as a full partner in the educational community. Since true parental choice would seem to dictate an all-inclusive approach, the Catholic school community should double its efforts to ensure that this happens. The Catholic education community should strengthen its internal community and organize

its human resources, especially parents—to face the challenges of the future.

Grass-Roots Involvement

In this context, what should be the strategies for obtaining new public assistance for Catholic and other non-public schools? The question has been partially addressed in the above discussion of programs of federal aid. For most of the 25 years since the enactment of ESEA, the Catholic school community has been able to pursue its interests in federal legislation through the Washington-level lobbying efforts of the USCC with the Congress. This has been carried out in close consultation with a representative group of Catholic school leaders from the state and diocesan levels, who comprise the membership of the USCC Department of Education's Federal Assistance Advisory Commission. All of the commission members also have been members of the NCEA Division of Chief Administrators of Catholic Education (CACE). In addition, NCEA staff have ex-officio membership on this commission. In reality, these successful lobbying efforts have been a joint USCC/NCEA endeavor.

In recent years, though, it has become increasingly important to generate more "grass-roots" support for the Catholic school community's legislative agenda in Congress—particularly with respect to obtaining increased funding for education-related programs. Good examples would be the newly-authorized funds to provide Title I services "off the premises" to eligible Catholic school students and the increased funding for the asbestos abatement/removal program. The severe federal budget deficit has dictated that any new or increased funding in one federal program must be taken out of another, often equally worthy, program, and the situation has been intensified by the above-mentioned 1990 budget agreement. Unfortunately, the reality is now, and will continue to be, that the "squeaky wheel gets the grease." Unless strong interest in and support for these issues can be generated among the constituents of the members of Congress, there will be little success in obtaining increased federal funding in these and other areas.

The need for strong constituent activity is equally important for any effort toward significant redesign in existing methods of providing federal aid, e.g., the use of a voucher as a delivery mechanism. Practically speaking and fortunately, grass-roots lobbying on issues of this kind may be very selective—i.e., focused on members of certain Congressional committees or even subcommittees, where these kinds of decisions really are made. Nonetheless, success will require a sophisticated grass-roots organization down to the parish level, which can be sustained over a long period of time.

As for the question of more general public financial assistance for private education, the first task of the non-public school community is to develop a consensus about the goals to be achieved. First, the objectives should be carefully defined. Is the goal to secure full public funding for non-public education through something like

a general education voucher program? If that is the case, is the Catholic school community prepared to sacrifice significant aspects of its autonomy; for that is what might be demanded as the price of participation in such a program? (Issues that immediately come to mind are control over admissions policies, flexibility in choosing curricula and teaching techniques, and limitations on discipline and dismissal policies.) It is doubtful that these questions and many more like them really have been debated in the Catholic or the broader private school community. On the contrary, in the current national debate on the issue of choice in education, there seems to be a rather naive belief among many Catholic educators that they could fully participate in a publicly-financed program of choice and carry on with business as usual. The one thing that history teaches about government-funded education is that it brings a certain level of regulation and limitation with respect to how tax dollars are used.

On the other hand, would such a debate within the non-public school community lead to a consensus around a more limited program of public assistance with fewer constraints on the operational freedoms of non-public schools—for example, categorical aid from state or federal governments being provided through a voucher? This might entail some regulation of the funded program, but would not impact on the basic operation of the non- public school. Another approach might be significant tax relief provided directly to the private school parents through educational tax credits or deductions (at any level of government), which would entail little or no regulation.

In any case, the time is ripe for this kind of debate. The issue of choice in education is in the air! Unfortunately, this is so because it is a symptom of the continuing very serious problems of public education. If the current debate results in a commitment to the goal of full public financing of "private" education through the use of a general educational voucher, it will only be accomplished in the context of a radical reform of the financing of all of public elementary and secondary education. In this case, the private school community should be prepared to engage itself fully in this broader debate. Logically, the Catholic church community belongs in that broader debate anyway, since two- thirds of its children attend public schools. The non-public school community should be prepared to join forces with all kinds of public school reform groups and take on a much larger agenda related to public education and its problems. Is it possible that the private school world is not yet prepared for this level or degree of involvement in the great debate about choice in education?

Whether the goals are broad based or more limited in scope, political success will only be achieved as a result of organizing and mobilizing Catholic school parents in support of the public policy objectives of the Catholic school community. There are some important lessons to be learned from previous efforts to generate grass-roots support for tuition tax credit legislation in Congress.

Efforts to organize and mobilize this kind of support were ad hoc and relied almost totally on the existing Catholic school network of diocesan administrators and principals to reach parents at the parish level. The effectiveness of this approach diminished over the three tuition tax credit campaigns in the 12-year period between 1972 and 1983.

Furthermore, it is increasingly the case that Catholic school superintendents and their staffs are working overtime just to maintain their schools. The typical Catholic school principal does not have adequate clerical support staff, often has to substitute in the classroom for other teachers, and generally is overworked and underpaid. To add the primary responsibility of educating, motivating, and organizing parents for effective intervention in the public policy process could be too much to ask from most Catholic school administrators.

There is, then, a real need to develop lay and parental leadership at both the parish and diocesan levels to assume this responsibility on an ongoing basis. These leaders should have the ability to activate effectively and broadly parents at the parish level, when needed. The agenda for such active involvement will vary from one geographical area to another, but will flow from all levels of government responsible for public policies which affect elementary and secondary schools. This parental leadership would work in concert with Catholic school officials, but should be capable of carrying out independently an agreed-upon program of influencing public policy.

Challenges

To sum up, then: the immediate challenge facing the Catholic school community is to commit itself, with the support of the larger non- public school community, to continue to engage the public policy debate at all levels of society and government in order to fight for justice and fairness for its students and their parents. The second challenge is to define its public policy goals and to develop the necessary consensus in support of them, both within the Catholic school community, as well as the broader world of private elementary and secondary education. Finally, in order to ensure success, the non-public school community should devote the necessary time and resources to the development of a viable grass- roots organization of Catholic and private school parents, which can effectively impact the public policy and legislative processes for favorable treatment of non-public education at the national state and local levels.

STUDY AND DISCUSSION GUIDE

POLITICAL ACTION, PUBLIC POLICY AND THE CATHOLIC SCHOOL

I. **Background Papers**

The Catholic School and the Common Good:
John E. Coons, J.D., professor, Boalt School of Law, University of California, Berkeley, CA.

Non-public Schools and Public Policy: The Past, The Present and Perhaps The Future
Frank J. Monahan, Director, Office of Government Liaison, United States Catholic Conference Washington, DC.

II. **Some Basic Questions**

How do/will Catholic school leaders understand and articulate the role/contribution of Catholic schools to the commonweal?

How can/ will the Catholic community provide effective voice and power on behalf of full and fair educational choice for parents?

What is/will be the range and inmpact of the Catholic educational community's involvement in the dialogue on public policy?

III. **Discussion**

1. To what extent do the Background Papers address the basic questions?

2. What questions are not addressed by the papers?

3. What new questions are raised by the authors of the Background Papers?

4. What is the group's reaction/evaluation of the current status of this issue? Do not confine your analysis to the materials in the Background Papers.

5. What is the group's judgment about desirable directions for Catholic schools in regard to this issue, and appropriate strategies for moving in those directions?

IV. Summary

2. *Strategy for the future* (A summation of responses to question 5: appropriate future directions.)

Discussion Leader_____ Location_____ Date_____

John Coons is professor of Law at the University of California, Berkeley. He has experience as professor of law at Northwestern University, Evanston, Illinois, and as a trial attorney for the Armed Services Board of Contract Appeals at the Pentagon in Washington, DC.

A native of Minnesota, his undergraduate degree is from the state university and his J. D. is from Northwestern.

He is co-chair of the Lawyers' Committee for Equal Rights in Education, has served on many other professional service committees and has been a visiting professor at a number of prominent universities.

He has written five books, the most recent being *Education by Choice: the Case For Family Control*, which he co-authored with Stephen Sugarman. He has also authored a large number of articles, chapters and reviews, the most recent being another instance of co-authorship with Sugarman, "The Private Schools Option in Systems of Educational Choice: in *Educationship Leadership*, January, 1991.

Professor Coons has been a consistent voice in support for assistance for non-public schools, choice, voucher systems and tuition tax credits.

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Frank Monahan is executive director of the Office of Government Liaison of the United States Catholic Conference (USCC). In this capacity he is responsible for the overall direction and coordination of lobbying functions for the USCC. Prior to 1985 he was the assistant executive director, during which time he managed and coordinated the United States bishops' national campaign in support of tuition tax credit legislation.

He also has served in the following capacities: assistant director of the Division of Elementary and Secondary Education for the USCC; director of the department of special programs for the archdiocese of Chicago; and director of neighborhood youth corps programs in the city of Chicago.

Mr. Monahan has an M.A. in History from Loyola University, Chicago. Upon completing his undergraduate work he served for three years as a Peace Corps volunteer in Nigeria, West Africa.

He is a member of many professional organizations, lectures frequently on his area of expertise and has published articles in a number of educational journals. He has traveled extensively. In addition to Spanish, he has studied the Latin, Greek, French, German, Yoruba and Hausa languages.

12

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